

S/N: 10/649,133
Applicant: Barnes, Dennis H.
Response to Office Action Mailed on 7/13/06
Response Dated: 8/9/06

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REMARKS

Claim Status

Claims 1-28 are pending in the instant application. This paper does not amend, cancel, or add new claims. Claims 1, 9, 15, 17, 21, 27, and 28 are the independent claims of the application.

Restriction Requirement

The Office Action asserted that the application contains claims directed to six patentably distinct species of the claimed invention: (I) claims 1-8 and 28 drawn to the structures/structural elements of a loudspeaker; (II) claims 9-14 drawn to the structures/structural elements of a loudspeaker; (III) claims 15-16 drawn to the structures/structural elements of a loudspeaker; (IV) claims 17-20 drawn to the structures/structural elements of a loudspeaker; (V) claims 21-26 drawn to the structures/structural elements of a loudspeaker; and (VI) claim 27 drawn to the structures/structural elements of a loudspeaker. In accordance with 37 C.F.R. §1.143, **Applicant hereby elects species (I) with traverse.**

According to 35 U.S.C. §121: "If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. Under MPEP §803(I), there are two criteria for a proper requirement for restriction between patentably distinct inventions: 1) the inventions must be independent or distinct as claimed, *and* 2) there would be a serious burden on the examiner if restriction is not required. Applicant respectfully traverses the restriction requirement for the following reasons.

1. Species are not independent or distinct as claimed
 - a. Species are related and not independent

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

According to MPEP §802.01(I), the term independent means that there is no disclosed relationship between the two or more inventions claimed, that is, they are unconnected in design, operation, and effect. According to MPEP §802.01(II), "two or more inventions are related (i.e. not independent) if they are disclosed as connected in at least one of design, operation, or effect."

i. Species (I) and (II) are related

Species (I), claims 1 and 28, primarily discloses a loudspeaker motor structure comprising: a) a magnetic pole piece comprising a first end elongated along an axis and a second end; b) a magnetic structure comprising a first magnetic pole and a second magnetic pole, the second magnetic pole being magnetically coupled to the second end of the pole piece, the magnetic structure comprising portions defining an opening along the axis, the first end of the pole piece being positioned in the opening of the magnetic structure to form a gap between the first end of the pole piece and the portions defining the opening of the magnetic structure proximate to the first end of the pole piece, the portions defining the opening that are proximate the first end of the pole piece being magnetically coupled to the first magnetic pole, resulting in a magnetic field in the gap; c) a voice coil sliding on the first end of the pole piece along the axis in the gap; and d) means for moving the pole piece to adjust strength of the magnetic field in the gap.

Species (II), claims 9-14, primarily discloses loudspeaker motor structure comprising: a) a pole piece comprising a top end and a base, the top end comprising cylindrical walls elongated along a center line axis, the walls comprising at least one pole piece irregularity, the base having a base diameter larger than diameter of the top end; b) a magnet comprising first and second magnet surfaces normal to the axis, and portions defining a magnet opening extending along the axis; a front plate comprising first and second front plate surfaces normal to the axis, and portions defining a front plate opening with at least one front plate irregularity, the second front plate surface being attached to the first magnet surface; c) an upper back plate comprising first and second upper back plate surfaces normal to the axis, and portions defining an upper back plate opening extending along the axis between the first and second upper back plate surfaces,

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

the upper back plate opening comprising a first space with a first dimension near the first upper back plate surface and a second space with a second dimension near the second upper back plate surface, the first dimension being smaller than the second dimension, the first dimension being smaller than the base diameter, the first upper back plate surface being attached to the second magnet surface; d) a lower back plate attached to the second upper back plate surface; and e) a voice coil sliding on the top end of the pole piece.

Species (II) is related to Species (I) because the species are connected in design, operation, and effect. In fact, Species (II) is a slightly narrower version of Species (I). More specifically, Species (II) includes a pole piece, a magnet structure (magnet, upper back plate, lower back plate), and a voice coil – elements described in Species (I). The magnet, upper back plate, and lower back plate of Species (II) can be considered to be functionally similar to the magnet structure of Species (I), as the upper back plate and lower back plate are both comprised of magnetic material and are joined together to the magnet to effectively comprise one magnetic structure. Also, the operation and effect of both species is similar, as both species use the same operation to provide a variable magnetic field that allows for a loudspeaker with adjustable sound reproduction characteristics. Thus, because there is a connection in design, operation, and effect between Species (I) and Species (II), Applicant believes that Species (I) and Species (II) are related.

Therefore, because Species (I) and Species (II) are related, and not independent, Applicant believes that the restriction requirement as to these species is improper.

ii. Species (I) and (III) are related

Species (III), claims 15-16, primarily discloses a loudspeaker comprising: a) a basket; b) a diaphragm; c) a spider attached to the basket; d) a pole piece comprising a top end and a base, the top end comprising cylindrical walls elongated along a center line axis, the walls comprising at least one pole piece irregularity, the base having a base diameter larger than diameter of the top end; e) an annular magnet comprising first and second magnet surfaces normal to the axis, and portions defining a magnet opening extending along the axis; f) a front plate attached to the basket, the front plate comprising first and second front plate surfaces normal to the axis, and portions defining a front plate opening with at least one front plate irregularity, the second front

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

plate surface being attached to the first magnet surface; g) an upper back plate comprising first and second upper back plate surfaces normal to the axis, and portions defining an upper back plate opening extending along the axis between the first and second upper back plate surfaces, the upper back plate opening comprising a first space with a first diameter near the first upper back plate surface and a second space with a second dimension near the second upper back plate surface, the first dimension being smaller than the second dimension, the first dimension being smaller than the base diameter, the first upper back plate surface being attached to the second magnet surface; h) a lower back plate attached to the second upper back plate surface; and i) a voice coil comprising a former and wire windings capable of receiving driving current, the former being attached to the spider and to the diaphragm.

Species (III) is related to Species (I) because the species are connected in design, operation, and effect. In fact, Species (III) is a slightly narrower version of Species (I). More specifically, Species (III) includes a pole piece, a magnet structure (magnet, front plate, upper back plate, lower back plate), and a voice coil – elements described in Species (I). The magnet, front plate, upper back plate, and lower back plate of Species (III) can be considered to be functionally similar to the magnet structure of Species (I), as the front plate, upper back plate and lower back plate are all comprised of magnetic material and are joined together to the magnet to effectively comprise one magnetic structure. Also, the operation and effect of both species is similar, as both species use the same operation to provide a variable magnetic field that allows for a loudspeaker with adjustable sound reproduction characteristics. Thus, because there is a connection in design, operation, and effect between Species (I) and Species (III), Applicant believes that Species (I) and Species (III) are related.

Therefore, because Species (I) and Species (III) are related, and not independent, Applicant believes that the restriction requirement as to these species is improper.

iii. Species (I) and (IV) are related

Species (IV), claims 17-20, primarily discloses a loudspeaker motor structure comprising: a) a magnetic pole piece comprising a bottom end and a top end elongated along an axis; b) a magnetic structure comprising a first magnetic pole and a second magnetic pole, and portions defining a first opening extending along the axis, the first end being positioned in the first

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

opening to form a first gap between the first end and the portions defining the first opening, the portions defining the first opening being magnetically coupled to the first magnetic pole; c) a magnetic back plate comprising threaded portions defining a second opening concentric with the axis, the back plate being magnetically coupled to the second magnetic pole; d) a non-magnetic center thread component attached to the second end, the center thread component having a threaded jutting part positioned in the second opening and engaging the threaded portions so that rotation of the center thread component relative to the back plate moves the center thread component and the pole piece along the axis in relation to the back plate, varying a second gap between the back plate and the pole piece, thereby varying magnetic coupling between the pole piece and the back plate, and thereby varying magnetic field in the first gap; and e) a voice coil comprising a former and wire windings capable of receiving electric current, the voice coil sliding on the top end under influence of an electromotive force generated by interaction of the magnetic field in the first gap and the electric current.

Species (IV) is related to Species (I) because the species are connected in design, operation, and effect. In fact, Species (IV) is a slightly narrower version of Species (I). More specifically, Species (IV) includes a pole piece, a magnet structure (magnet, magnetic back plate), and a voice coil – elements described in Species (I). The magnet and magnetic back plate of Species (IV) can be considered to be functionally similar to the magnet structure of Species (I), as the magnetic back plate is comprised of magnetic material and is joined together to the magnet to effectively comprise one magnetic structure. Also, the operation and effect of both species is similar, as both species use the same operation to provide a variable magnetic field that allows for a loudspeaker with adjustable sound reproduction characteristics. Thus, because there is a connection in design, operation, and effect between Species (I) and Species (IV), Applicant believes that Species (I) and Species (IV) are related.

Therefore, because Species (I) and Species (IV) are related, and not independent, Applicant believes that the restriction requirement as to these species is improper.

iv. Species (I) and (V) are related

Species (V), claims 21-26, primarily discloses a loudspeaker motor structure comprising:
a) a magnetic pole piece comprising a cylindrical top end elongated along a center line axis, and

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

a bottom end comprising portions defining an aperture extending along the axis; b) a magnet comprising first and second magnet surfaces normal to the axis; c) a magnetic front plate comprising first and second front plate surfaces normal to the axis, and portions defining a front plate opening between the first and second front plate surfaces, the second front plate surface being attached to the first magnet surface; d) a magnetic back plate comprising first and second back plate surfaces normal to the axis, and portions defining a back plate opening between the first and second back plate surfaces, the portions defining the back plate opening comprising portions defining a first space with a first dimension near the first back plate surface and threaded portions defining a second space with a second diameter near the second back plate surface; e) a non-magnetic center thread component comprising an inner part positioned in the aperture and a jutting part protruding from the aperture, the jutting part being threaded into the second space so that the top end is positioned in the front plate opening to form a gap between the pole piece and the front plate; and f) a voice coil sliding on the top end.

Species (V) is related to Species (I) because the species are connected in design, operation, and effect. In fact, Species (V) is a slightly narrower version of Species (I). More specifically, Species (V) includes a pole piece, a magnet structure (magnet, magnetic front plate, magnetic back plate), and a voice coil – elements described in Species (I). The magnet, magnetic front plate, magnetic back plate of Species (V) can be considered to be functionally similar to the magnet structure of Species (I), as the magnetic front plate, and magnetic back plate are all comprised of magnetic material and are joined together to the magnet to effectively comprise one magnetic structure. Also, the operation and effect of both species is similar, as both species use the same operation to provide a variable magnetic field that allows for a loudspeaker with adjustable sound reproduction characteristics. Thus, because there is a connection in design, operation, and effect between Species (I) and Species (V), Applicant believes that Species (I) and Species (V) are related.

Therefore, because Species (I) and Species (V) are related, and not independent, Applicant believes that the restriction requirement as to these species is improper.

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

v. Species (I) and (VI) are related

Species (VI), claim 27, primarily discloses a loudspeaker comprising: a) a basket; b) a diaphragm; c) a spider attached to the basket; d) a magnetic pole piece comprising a cylindrical top end elongated along a center line axis, and a bottom end comprising portions defining an aperture extending along the axis; e) a magnet comprising first and second magnet surfaces normal to the axis; f) a magnetic front plate attached to the frame, the front plate comprising first and second front plate surfaces normal to the axis, and portions defining a front plate opening between the first and second front plate surfaces, the second front plate surface being attached to the first magnet surface; g) a magnetic back plate comprising first and second back plate surfaces normal to the axis, and portions defining a back plate opening between the first and second back plate surfaces, the portions defining the back plate opening comprising portions defining a first space with a first dimension near the first back plate surface and threaded portions defining a second space with a second diameter near the second back plate surface; h) a non-magnetic center thread component comprising an inner part positioned in the aperture and a jutting part protruding from the aperture, the jutting part being threaded into the second space so that the top end is positioned in the front plate opening to form a gap between the pole piece and the front plate; and i) a voice coil sliding on the top end, the voice coil comprising a former attached to the spider and to the diaphragm, the voice coil further comprising wire windings capable of receiving driving current.

Species (VI) is related to Species (I) because the species are connected in design, operation, and effect. In fact, Species (VI) is a slightly narrower version of Species (I). More specifically, Species (VI) includes a pole piece, a magnet structure (magnet, magnetic front plate, magnetic back plate), and a voice coil – elements described in Species (I). The magnet, magnetic front plate, magnetic back plate of Species (VI) can be considered to be functionally similar to the magnet structure of Species (I), as the magnetic front plate, and magnetic back plate are all comprised of magnetic material and are joined together to the magnet to effectively comprise one magnetic structure. Also, the operation and effect of both species is similar, as both species use the same operation to provide a variable magnetic field that allows for a loudspeaker with adjustable sound reproduction characteristics. Thus, because there is a

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

connection in design, operation, and effect between Species (I) and Species (VI), Applicant believes that Species (I) and Species (VI) are related.

Therefore, because Species (I) and Species (VI) are related, and not independent, Applicant believes that the restriction requirement as to these species is improper.

Therefore, Applicant believes that because Species (I) through (VI) are related, and not independent, the restriction requirement as to Species (I) through (VI) is improper.

b. Species are not distinct as claimed

According to MPEP §802.01(II), "Related inventions are distinct if the inventions *as claimed* are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is **PATENTABLE** (novel and non-obvious) **OVER THE OTHER** (though they may each be unpatentable over the prior art."

i. Species (I) through (VI) as claimed are connected in at least one of design, operation, or effect

For similar reasons as found in sections 1(a)(i) through 1(a)(v) of this Reply, Applicant respectfully submits that species (I) through (VI), *as claimed*, are connected in at least one of design, operation, or effect, and thus not distinct. Therefore, because the species are distinct, Applicant believes that the restriction requirement as to these species is improper.

ii. Species are not patentable over each other

Under MPEP §808.01(a), "A requirement for restriction is permissible if there is a patentable difference between the species as claimed and there would be a serious burden on the Examiner if the restriction is not required." The section further states, "In making a requirement

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

for restriction in an application claiming plural species, the Examiner should group together species considered *clearly* unpatentable over each other (emphasis added)." As will be discussed in section 2 below, Applicant does not believe that there would be a serious burden on Examiner if restriction is not required. Further, it is Applicant's contention that Species (I) through (VI) are not *clearly* patentable over one another, and therefore, that Species (I) through (VI) are not distinct.

With regard to Species (II), Species (I) is directed to a loudspeaker motor structure primarily having a pole piece, magnet structure, a voice coil, and a means for moving the pole piece. Species (II) includes a pole piece, a magnet structure (magnet, upper back plate, lower back plate), and a voice coil – elements all described in Species (I), or at least an obvious variant of the elements described in Species (I). Therefore, it is Applicant's belief that Species (II) cannot be considered patentably distinct over Species (I).

With regard to Species (III), Species (III) discloses a loudspeaker including a basket, a diaphragm, a spider, a pole piece, a magnet structure (magnet, front plate, upper back plate, lower back plate), and a voice coil. With the exception of the basket, diaphragm, and spider, the remaining elements are all described in Species (I), or at least are an obvious variant of the elements described in Species (I). With regard to the basket, diaphragm, and spider, these components are standard components in the majority of speakers. Thus, because Species (I) is directed to a loudspeaker motor structure, one with ordinary skill in the art would know to combine the elements in Species (I) with a basket, diaphragm, and a spider to properly claim a loudspeaker as disclosed in Species (III). Therefore, it is Applicant's belief that Species (III) cannot be considered patentably distinct over Species (I), as the elements in Species (III) are disclosed in or are obvious in light of the elements of Species (I).

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

With regard to Species (IV), Species (IV) includes a pole piece, a magnet structure (magnet, magnet back plate), a non-magnetic center thread component, and a voice coil – elements all described in Species (I), or at least an obvious variant of the elements described in Species (I). The center thread component is used to move the pole piece up or down, and thus constitutes a means for moving the pole piece, as disclosed in Species (I). Therefore, it is Applicant's belief that Species (IV) cannot be considered patentably distinct over Species (I).

With regard to Species (V), Species (V) includes a pole piece, a magnet, a magnet front plate, a magnet back plate, a non-magnetic center thread component, and a voice coil – elements all described in Species (I), or at least an obvious variant of the elements described in Species (I). The magnet, magnet front plate, and magnet back plate can all be considered to constitute a magnetic structure as disclosed in Species (I). Further, the center thread component is used to move the pole piece up or down, and thus constitutes a means for moving the pole piece, as disclosed in Species (I). Therefore, it is Applicant's belief that Species (V) cannot be considered patentably distinct over Species (I).

With regard to Species (VI), Species (VI) discloses a loudspeaker including a basket, a diaphragm, a spider, a magnetic pole piece, a magnet, a magnetic front plate, a magnetic back plate, a non-magnetic center thread component, and a voice coil. With the exception of the basket, diaphragm, and spider, the remaining elements are all described in Species (I), or at least are an obvious variant of the elements described in Species (I). The magnet, magnetic front plate, and magnet back plate can all be considered to constitute a magnetic structure as disclosed in Species (I). Further, the center thread component is used to move the pole piece up or down, and thus constitutes a means for moving the pole piece, as disclosed in Species (I). With regard to the basket, diaphragm, and spider, these components are standard components in the majority

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

of speakers. Thus, because Species (I) is directed to a loudspeaker motor structure, one with ordinary skill in the art would know to combine the elements in Species (I) with a basket, diaphragm, and a spider to properly claim a loudspeaker as disclosed in Species (VI). Therefore, it is Applicant's belief that Species (VI) cannot be considered patentably distinct over Species (I), as the elements in Species (VI) are disclosed in or are obvious in light of the elements of Species (I).

iii. No combination/sub-combination relationship exists

Assuming Examiner considers Species (I) through (VI) to fall under the combination/sub-combination relationship, under MPEP §806.05(c), to support a requirement for restriction between combination and sub-combination inventions, both two-way distinctness and reasons for insisting on restriction are necessary. The inventions are distinct if it can be shown that a combination as claimed: 1) does not require the particulars of the sub-combination as claimed for patentability, and 2) the sub-combination can be shown to have utility either by itself or in another materially different combination. Species (I) through (VI) relate to either a loudspeaker motor structure or a loudspeaker including the loudspeaker motor structure. For purposes of this discussion, it is assumed that the loudspeaker constitutes the combination, while the loudspeaker motor structure constitutes the sub-combination.

With regard to the first requirement, the loudspeaker cannot function without the loudspeaker motor structure. Further, the elements of the loudspeaker in addition to the loudspeaker motor structure, namely the basket, diaphragm, and spider, do not add to the patentability of the loudspeaker as these components are well known in the art in loudspeaker design. Therefore, the loudspeaker combination heavily relies on the particulars of the sub-combination (loudspeaker motor structure) for patentability. Thus, the first requirement for two-

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

way distinctness is not met, as the combination as claimed *does* require the particulars of the sub-combination for patentability.

With regard to the second requirement, the loudspeaker motor structure cannot be used separate from the rest of the loudspeaker assembly. It is specifically designed to accompany and function in unison with the various sized and shaped components that traditionally comprise a loudspeaker – the basket, diaphragm, and spider. The loudspeaker motor structure is not capable of functioning as a loudspeaker motor structure without being integrated into a speaker assembly. Further, Applicant knows of no other practical use for a loudspeaker motor structure other than inside a speaker assembly. Therefore, the sub-combination (loudspeaker motor structure) cannot be shown to have utility either by itself or in another materially different combination. Thus, the second requirement for two-way distinctness is not met.

Therefore, as the two-way distinctness requirements cannot be met, it is Applicant's belief that there can be no distinction made between Species (I) through (VI) based on a combination/sub-combination relationship.

Therefore, because the species as claimed are connected in at least one of design, operation, or effect, because the species are not *clearly* patentable over each other, *and* because there can be no showing of a combination/sub-combination relationship between the species, Applicant respectfully submits that the species cited by Examiner are not distinct. As stated in MPEP §806(C), "Where inventions are related as disclosed but are not distinct as claimed, restriction is never proper." As Applicant believes, based on the reasoning discussed in sections 1(a)(i) through 1(a)(v) of this Reply, that the species are related, and as Applicant also believes, based on the above discussion, that the species are not distinct, Applicant respectfully submits that the restriction requirement in the instant application is improper and should be removed.

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

2. There would not be a serious burden on the Examiner if restriction is not required
 - a. Examiner has not made a *prima facie* showing that there would be a serious burden on the Examiner if a restriction is not required.

Under MPEP §808.02, where related inventions as claimed are shown to be independent or distinct under MPEP §806.05(c), the Examiner, in order to establish reasons for insisting upon restriction, *must* explain why there would be a serious burden on the Examiner if restriction is not required (emphasis added).” According to MPEP §803(II)(II), “for purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP §808.02.” Assuming that the inventions can be shown to be related or distinct, Examiner made no such showing in the Office Action that any of the species (I) through (VI) required a separate classification, separate status in the art, or a different field of search as defined in MPEP §808.02. Therefore, it is Applicant’s belief that there would not be a serious burden on the Examiner if a restriction is not required.

- b. Assuming a *prima facie* showing of a serious burden on Examiner has been made, this *prima facie* showing is rebuttable.

Assuming Examiner has made a *prima facie* showing of a serious burden on the Examiner if restriction is not required, for the following reasons, Applicant respectfully submits that this showing is rebuttable and that there would not be a serious burden on the Examiner if restriction is not required.

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

i. There is no separate classification between the species

Under MPEP §808.02(A), showing a separate classification between the parties signifies that each invention has attained recognition in the art as a separate subject for inventive effort and also a separate field of search. Species (I) through (VI) relate to either a loudspeaker motor structure or a loudspeaker including the loudspeaker motor structure. Applicant believes that Species (I) through (VI) fall under the same classification, namely class 381 – Electrical Audio Signal Processing Systems and Devices. More particularly, Applicant believes that Species (I) through (VI) fall under the same sub-classification, namely class 381/150 – Electro-Acoustic Audio Transducer. Therefore, Applicant believes that because there is a similar classification and field of search for Species (I) through (VI), that there would be no serious burden on Examiner if a restriction was not required.

ii. There is no separate status in the art between the species

Under MPEP §808.02(B), even though they are classified together, each invention can be shown to have formed a separate subject for inventive effort when the Examiner can show a recognition of separate inventive effort by inventors. Because there is only one inventor in the instant application, it is not possible for Examiner to show a recognition of separate inventive effort by the inventors. Further, as discussed in section 2(b)(i) above, there is no separate field of search required for each of Species (I) through (VI). Therefore, Applicant believes that because there is no separate status in the art between Species (I) through (VI), that there would be no serious burden on Examiner if a restriction was not required.

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

iii. A different field of search is not required between the species

Under MPEP §808.02(C), “where it is necessary to search for one of the inventions in a manner that is *not likely to result* in finding art pertinent to the other invention(s), a different field of search is shown, even though the two are classified together (emphasis added).” Species (I) through (VI) relate to either a loudspeaker motor structure or a loudspeaker including the loudspeaker motor structure. A search for a loudspeaker *will likely result* in finding patents relating to loudspeaker motor structures, as a loudspeaker motor structure can only be effectively used within a loudspeaker and constitutes a vital functional aspect of a loudspeaker. A loudspeaker does not work without some type of a loudspeaker motor structure. Similarly, a search for a loudspeaker motor structure *will likely result* in finding patents relating to loudspeakers for the same reasons. Therefore, because Applicant believes that a different field of search is not required between Species (I) through (VI), Applicant believes there would be no serious burden on Examiner if a restriction was not required.

Therefore, even if Examiner can make a *prima facie* case that there would be a serious burden on Examiner if restriction were not required, Applicant respectfully submits that a potential *prima facie* showing of such would be rebutted for the reasons stated above. Thus, Applicant believes that there would be no serious burden on Examiner if restriction were not required, and therefore, that the restriction requirement should be removed.

S/N: 10/649,133

Applicant: Barnes, Dennis H.

Response to Office Action Mailed on 7/13/06

Response Dated: 8/9/06

CONCLUSION

Applicant and its attorney have carefully reviewed the Office Action and believe that the claims presently on file pertain to one invention, are patentable, and are presently in condition for allowance. Therefore, Applicant respectfully requests that Examiner remove the restriction requirement and place the application in condition for allowance.

Please feel free to contact the undersigned attorney at the number below to discuss any issues pertaining to this matter.

Dated: August 9, 2006

Respectfully Submitted,

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